IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AIR PRODUCTS AND CHEMICALS, INC.	:	CIVIL ACTION
	:	
v.	:	NO. 06-1272
	:	
TEAMSTERS LOCAL 773	:	
	:	

MEMORANDUM

Juan R. Sánchez, J. **July 28, 2006**

Air Products and Chemicals, Inc. asks this Court to vacate an arbitrator's award of severance pay to thirty-nine members of Teamsters Local 773, on grounds the arbitrator exceeded her powers. Local 773 asks this Court to confirm the decision because severance pay is a monetary award which draws its essence from the Memorandum Agreement which was before the arbitrator. Because I agree, I will confirm the award.

FACTS[1]

The collective bargaining agreement (CBA) between Teamsters Local 773 and Ashland Specialty Chemical Company at its Easton, Pennsylvania, plant was effective from February 1, 2003 to January 31, 2006. In 2003, Air Products agreed to buy three Ashland plants, the plant in Easton, a plant in Dallas, Texas, represented by a different union, and a non-unionized plant in Colorado.

[1]The facts are derived from the parties' stipulation of fact before the arbitrator and the arbitrator's findings of fact. This Court "must defer to the arbitrator's factual findings. . . . [F]indings of fact and inferences to be drawn therefrom are the exclusive province of the arbitrator." *Citgo Asphalt Ref. Co. v. Paper, Allied-Indus., Chem. & Energy Workers Int'l Union Local No. 2-991*, 385 F.3d 809, 816 (3d Cir. 2004) (internal citations omitted).

On June 30, 2003, Ashland gave Air Products notice of the existence of the CBA at the Easton plant as required by Article 32 of the CBA. Article 32 provides "[i]n the event the entire operation is sold . . . such operation shall continue to be subject to the terms and conditions of this Agreement." (CBA at 24.)

Nine days later, Air Products told Local 773 it was determining the terms and conditions of employment it would offer to employees. The members of Local 773 received COBRA[2] letters and were advised they would have to be tested for drugs and put on probation before being hired by Air Products. The union reacted by filing a grievance on August 6, 2003 against Ashland for failing to include in the sales contract an obligation to assume the CBA. The union sought to enjoin the sale in a legal action resolved with a Memorandum Agreement signed by both companies and the union on August 28, 2003. Air Products offered employment to most of the active members of Local 773 and negotiated a new collective bargaining agreement, as called for in the Memorandum. The Memorandum includes paragraph 6, which states:

> 6. The Union reserves the right to arbitrate any claim that Ashland violated Article 32 of the Ashland collective bargaining agreement in its sale of the Easton facility to [Air Products]. The Union's remedy in any such arbitration proceeding shall be limited to monetary damages. . . . [Air Products] agrees to be bound by the results of any such arbitration as long as the results are confined to monetary matters (i.e., excluding any non-monetary item) as long as the arbitrator does not exceed authority under federal labor law.

(Memorandum of Agreement at 1.)

To decide the union's grievance over the failure to enforce Article 32 of the CBA, the arbitrator compared the two collective bargaining agreements, identified the areas in which the union

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[2]The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), 29 U.S.C. § 1161 *et seq.*, protects a terminated employee's continued health insurance benefits.

received different levels of benefits, and left it up to the parties to determine the dollar figure of the net loss, if any, to the union. The arbitrator retained jurisdiction to resolve disputes in the calculations. That part of the arbitrator's decision is not challenged. Air Products does seek to vacate the arbitrator's decision that the sale to Air Products entitles the union members to severance, even though there was no break in their employment.

The CBA between Ashland and Local 773 provided for severance for union members in the event of "the closing of the Easton, Pa. Plant or job elimination." (CBA Article 34). The arbitrator reasoned she had authority to consider severance benefits as a money matter under paragraph six of the Memorandum. The arbitrator found the Ashland CBA provided severance benefits and the Air Products CBA does not. If Air Products had assumed the CBA as it was required to do under Article 32, then the members of Local 773 would have retained their rights to future severance benefits.[3] Air Products did not assume the CBA and the employees were terminated, subject to re-hire if they met certain, new conditions. The union members received COBRA letters, were tested for drugs and were subject to a new probationary period.

The arbitrator reasoned the loss of the severance benefits is a "stand-alone damage caused by Ashland's violation of Article 32." (Arb. op. at 17.) She held "[t]he fact that the two contracts have substantial changes is one of the very reasons severance benefits are owed. The severance claim should not then be made a nullity by stirring it into the pot of the 'net loss' calculation." (Arb. op. at 17.)

Air Products asks this Court to vacate the arbitration award. Air Products argues the

[3]Had Air products adopted Ashand's CBA, the union members would not have experienced the change in employment which entitled them to severance benefits.

arbitrator exceeded her authority when she considered the severance pay question and her decision did not draw its essence from the Memorandum. Air Products also argues in the alternative the claims for severance should be against Ashland and not Air Products. The case comes before me on cross motions for summary judgment.

DISCUSSION

A motion for summary judgment will only be granted if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The Court must review all of the evidence in the record and draw all reasonable inferences in favor of the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Stephens v. Kerrigan*, 122 F.3d 171, 176-77 (3d Cir. 1997). When considering cross motions for summary judgment, this Court must consider each motion separately, drawing inferences against each movant in turn. *Blackie v. Maine*, 75 F.3d 716, 721 (1st Cir. 1996).

Only if the arbitrator were dishonest or exceeded her authority could this Court vacate the award. 9 U.S.C. § 10(a)(4).[4] Under the Federal Arbitration Act, courts are not authorized to review

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[4] **9 U.S.C. § 10. Same; vacation; grounds; rehearing**

> **(a)** In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--
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> > **(1)** where the award was procured by corruption, fraud, or undue means;
> > **(2)** where there was evident partiality or corruption in the arbitrators, or either of them;
> > **(3)** where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
> > **(4)** where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

the arbitrator's decision on the merits despite allegations that the decision rests on factual errors or misinterprets the parties' agreement. *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.* , 484 U.S. 29, 31 (1987). If an "'arbitrator is even arguably construing or applying the contract and acting within the scope of his authority,' the fact that 'a court is convinced he committed serious error does not suffice to overturn his decision.'" *Eastern Associated Coal Corp. v. Mine Workers,* 531 U.S. 57, 62 (2000) (quoting *Misco*, 484 U.S. at 38). This Court is "not free to vacate an award merely because [I] view[] the merits differently." *United Steelworkers of Am. v. Enter. Wheel & Car,* 363 U.S. 593, 596 (1960).

Only when the arbitrator strays from the agreement and "dispense[s] his own brand of industrial justice" is his decision unenforceable. *Enter. Wheel*, 363 U.S. at 597. When an arbitrator resolves disputes regarding the application of a contract, and no dishonesty is alleged, the arbitrator's 'improvident, even silly, factfinding' does not provide a basis for a reviewing court to refuse to enforce the award. *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509 (2001) (internal citations and quotations omitted). The Supreme Court said of the Ninth Circuit:

> To be sure, the Court of Appeals here recited these principles, but its application of them is nothing short of baffling. The substance of the court's discussion reveals that it overturned the arbitrator's decision because it disagreed with the arbitrator's factual findings, particularly those with respect to credibility. The Court of Appeals, it appears, would have credited Smith's 1996 letter, and found the arbitrator's refusal to do so at worst 'irrational' and at best 'bizarre.' . . . But even 'serious error' on the arbitrator's part does not justify overturning his decision, where, as here, he is construing a contract and acting within the scope of his authority.

Garvey 532 U.S. at 510. Congressional preference for private resolution of labor disputes as seen in the federal statutes governing labor-management relations compels the high level of deference. *Misco*, 484 U.S. at 37. The parties have bargained for the arbitrator's decision, "it is the arbitrator's

view of the facts and of the meaning of the contract that they have agreed to accept. Courts thus do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts." *Misco*, 484 U.S. at 38;*Major League Umpires Ass'n v. Am. League of Prof. Baseball Clubs*, 357 F.3d 272, 279 (3d Cir. 2004). Review of arbitration awards is "singularly undemanding." *Matteson v. Ryder Sys. Inc.*, 99 F.3d 108, 113 (3d Cir. 1996).

A court may vacate an arbitrator's award only if the award does not draw its essence from the collective bargaining agreement. *Enter. Wheel*, 363 U.S. at 597. This exception is a narrow one. An arbitration award draws its essence from the bargaining agreement if "the interpretation can in any rational way be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties intention." *Tanoma Min. Co., Inc. v. Local Union No. 1269, United Mine Workers of Am.*, 896 F.2d 745, 747-48 (3d Cir. 1990) (reversing the district court and reinstating arbitration award).

This Court's review of the arbitrator's factual findings is not whether those findings were supported by the weight of the evidence or even whether they were clearly erroneous. All that is required is some support in the record. *NF&M Corp. v. United Steelworkers of Am.*, 524 F.2d 756, 759 (3d Cir. 1975). When the court finds some support, the inquiry is over. *Tanoma Min. Co.*, 896 F.2d at 748. If this Court is satisfied the arbitrator's award draws its essence from the CBA, it is without jurisdiction to consider the award further. *Brentwood Med. Assoc.s v. United Mine Workers of Am.*, 396 F.3d 237, 240-41 (3d Cir. 2005).

In one of the few cases in which the Third Circuit reversed a decision by an arbitrator, the Court found no support in the record for an arbitrator's decision to reverse Citgo's zero tolerance policy for drug use. "The award here comported with the arbitrator's view of fairness, but did not

draw its essence from the CBA." *Citgo Asphalt Refining Co. v. Paper, Allied-Indus., Chem. & Energy Workers Int'l Union Local No. 2-991*, 85 F.3d 809, 817 (3d Cir. 2004). Manifest disregard for the CBA is established when the arbitrator's award is "'totally unsupported by principles of contract construction.'" *Exxon Shipping Co. v. Exxon Seamen's Union*, 993 F.2d 357, 360 (3d Cir.1993) (quoting *News Am. Publ'ns v. Newark Typographical Union, Local 103*, 918 F.2d 21, 24 (3d Cir. 1990)).

Air Products argues the arbitrator's decision on severance goes beyond her authority under the Memorandum and does not draw its essence from the Memorandum. The arbitrator found she had authority to consider the severance benefits as a monetary matter under paragraph six of the Memorandum. A plain reading of paragraph six supports the arbitrator's decision that she had authority to award money damages based on Article 34, the severance clause, of the Ashland CBA. Because I find support in the record for her decision on jurisdiction, I must confirm the arbitrator's award. *Tanoma Min. Co.*, 896 F.2d at 748.

The arbitrator's award of severance benefits rests on her factual finding the decision by Air Products not to adopt Ashland's CBA was a job termination under Article 34. This Court may not substitute its own view of the facts for that of the arbitrator. *NF&M Corp*., 524 F.2d at 759. The arbitrator's finding is supported by the COBRA letters Air Products sent to the members of Local 773, conditioning their re-employment on negative tests for drugs and a satisfactory period of probation. Because I find support in the record, my inquiry is complete. *Tanoma Min. Co.*, 896 F.2d at 748. Air Products agreed in paragraph six of the Memorandum to be bound by the arbitrator's decision; thus, its argument the award should have been against Ashland is unavailing. An appropriate order follows.

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	:	

ORDER

And now this 28th day of July, 2006, Defendant's Motion for Summary Judgment is GRANTED and Plaintiff's Motion to Vacate In Part (Document 10) is DENIED. Judgment is entered in favor of Teamsters Local 773. The Opinion and Award by Arbitrator Margaret Brogan on February 23, 2006 is hereby ENFORCED. The Clerk shall mark the above-captioned case closed.

BY THE COURT:

\s\ Juan R. Sánchez
Juan R. Sánchez, J.